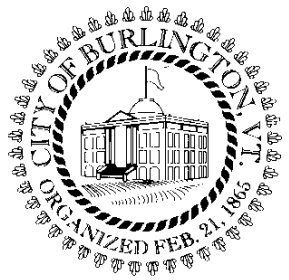


## Department of Permitting and Inspections

Zoning Division  
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Layne Darfler, Permit Technician  
Alison Davis, Zoning Clerk



### MEMORANDUM

To: Development Review Board  
From: Mary O'Neil, AICP, Principal Planner  
Date: Wednesday, March 3, 2021  
RE: 75 Cherry Street; ZP21-0414CA

**Note: These are staff comments only. Decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

**File:** 21-0414CA; Amendment to ZP17-0662CA/MA

**Location:** 75 Cherry Street (Burlington City Place)

**Zone:** FD6 **Ward:** 3C

**Parking District:** Multi-Modal Mixed Use

**Date application accepted:** October 19, 2020 (incomplete); deemed complete January 4, 2021.

**Applicant/ Owner:** BTC Mall Associates

**Request:** Amendment to ZP17-0662CA/MA; redevelopment of the former Burlington Town Center Mall site into 700,000 sf mixed use. 426 residential units, restaurant, retail, community space, co-working and meeting space. Includes 422 parking spaces in structured garage.



## **Background:**

### **75 Cherry Street**

- **Zoning Permit 21-0354AP**; Appeal of Zoning Administrator Determination regarding relinquishing 17-0662CA/MA. Appeal public hearing scheduled for February 16, 2021.
- **Zoning Permit 20-0522CA**; Amend ZP 17-0662CA/MA phasing schedule. Application withdrawn January 2021.
- **Zoning Permit 18-0996CA**; fenestration changes above the podium. Minor changes to accent materials changing metal panel between the windows, on selected corners, and partial facades to limestone finish precast panel. Elevations include approved cable railings. Original Permit ZP17-0662CA/MA. May 2018.
- **Zoning Permit 18-0768CA**; 7th and 12th floor amenity space; change to project phasing. April 2018.
- **Zoning Permit 18-0648CA**; amendment to 17-0662CA/MA; addition of 16 residential units on the east and west elevations at level 2,3, and 4 reflected in exterior revisions and floorplans. Elimination of awnings at retail. Parking layout revision. February 2018.
- **Zoning Permit 18-0538CA**; Exterior Boiler Flue. December 2017.
- **Zoning Permit 18-0225CA**; install roof top unit to support existing retail. August 2017.
- **Zoning Permit 17-0662CA/MA**; mixed use redevelopment of the existing Burlington Town Center mall site and associated lot line adjustments. March 2017; adjudicated, Stipulation Agreement issued July 17, 2017.
- **Zoning Permit 12-0391CA**; convert asphalt turnaround area to grass and landscaping on Cherry Street side of property. September 2011.
- **Zoning Permit 79-120**; pathways within the urban renewal area and drive into parking area on parcel 10 as marked to be paved. (Cherry Street circular drive.) April 1979.

### **49 Church Street** (interior of assembled parcels prior to boundary line adjustment, excluding Church St. frontage)

- **Non-applicability of Zoning Permit Requirements 10-0992NA**; interior fit up for salon. May 2010.
- **Zoning Permit 10-0495CA**; install new rooftop HVAC system for Baby Gap store. November 2009.
- **Zoning Permit 10-0191CA**; install 34 x 34 in wide and 32 high 5 ton AC system on roof of Mall and connect to existing duct work. September 2009.
- **Zoning Permit 07-126SN**; Four replacement parallel signs for Burlington Town Center (Bank St. and Church St. facades and 3 new freestanding signs (Church St.) Parallel Church St. signs to be lit with new reverse channel illumination; freestanding signs to be externally illuminated. No illumination proposed for Bank St. parallel signs. August 2006.
- **Zoning Permit 04-087**; install metal panels to match Old Navy storefront, patch and paint to match. August 2003.

- **Zoning Permit 03-268**; install non-illuminated canvas shed awning on Bank St. façade of Pottery Barn. December 31, 2002.
- **Zoning Permit 03-108**; installation of concrete landing and stairs with handrails at service entry for Burlington Town Center (Pottery Barn) on Bank Street. September 2002.
- **Zoning Permit 02-360**; installation of two black canvas awnings on Bank Street for J. Crew Store. March 2002.
- **Zoning Permit 02-361**; installation of projecting sign on Bank Street for J. Crew Store. March 2002.
- **Zoning Permit 02-328**; installation of two rooftop fan units for Empire Express restaurant. February 2002.
- **Zoning Permit 02-232**; installation of 2 parallel signs on Cherry Street at Gap elevation. Installation of 2 parallel signs on Cherry Street at Filene's elevation. November 2001.
- **Zoning Permit 01-488**; parallel sign for J. Crew store, frontage on Bank Street. June 2001.
- **Zoning Permit 01-483**; amend previously approved façade improvements for the Bank Street storefront portion of the existing Burlington Town Center retail mall. Tenant to be J. Crew. June 2001.
- **Zoning Permit 01-445**; renovations to the Bank Street façade of the mall. May 2001.
- **Zoning Permit 01-404**; amend previously approved façade changes for the Cherry Street and Church Street facades of the existing retail mall. April 2001.
- **Zoning Permit 00-494**; renovations to the Cherry, Bank and Church Street frontages of the existing mall. April 2000.
- **Non-applicability of Zoning Permit Requirements**; interior change of use of 600 sq. ft. to nail salon. September 1996.
- **Non-applicability of Zoning Permit Requirements**; interior continued use of 30,000 sq. ft. for offices. June 1995.
- **Zoning Permit 93-226**; fenestration renovations to Cherry Street façade of mall for the Gap. Includes combining two windows into one and the installation of a service door. November 1992.
- **Zoning Permit 92-160**; change of use within Burlington Square Mall from bank offices to fitness center, 16,110 sq. ft. October 1991.
- **Zoning Permit 87-119**; place 8 signs for Burlington Square on various facades of structures. December 1987.
- **Zoning Permit 84-331 / COA 84-067**; construction addition to Radisson Hotel (64 new rooms, net 57 rooms) with 467 space parking garage, new 68,000 sq. ft. department store on Bank Street (Porteous), 48,000 sq. ft. addition to Burlington Square Mall. July 1984.
- **Zoning Permit 81-821**; open access between Burlington Square Mall and Woolworths at lower level of mall. December 1981.

- **Zoning Permit 81-814**; remove staircase off atrium to plaza level. December 1981.
- **Determination of Non-Applicability**; new retail store – The Limited. September 1981.
- **Determination of Non-Applicability**; wall finishes, suspended ceilings, lighting, finish flooring & store fixtures. August 1981.
- **Zoning Permit 81-578**; erect five flagpoles and one kiosk at the entrance to the mall as per 4443 (c) approval of the Board of Aldermen on 6.15.1981. June 1981.
- **Zoning Permit 81-20**; (current use; vacant land); pave pathway currently used by (illegible) between Cherry and Pearl Street to ?; erect fence with gates along the northerly and southerly boundaries. October 1980.
- **Zoning Permit 81-190**; removal of existing stairs southeast corner of mall atrium. September 1980.
- **Zoning Permit 81-171**; construct a fountain in previously approved project (scope of services). September 1980.
- **Zoning Permit 80-900**; bring plaza beneath VFSL out flush with building for offices, west elevation.
- **Zoning Permit 80-755**; construct stairway connection between McDonalds and Proposed Burlington Square Expansion. March 1980.
- **Zoning Permit 595**; Church Street entrance of Burlington Square and add approx. 30,000 sq. ft. of retail and common area space extending from Church Street to easterly boundary parcel 3. May 1979.
- **Zoning Permit 80-710**; remove stairs northwest corner of atrium from atrium floor to balcony. January 1980.
- **Zoning Permit 79-92**; entrance to Burlington Square shopping mall and open plaza. April 1979.
- **Zoning Permit 79-17**; Church Street entrance of Burlington Square and add approx. 30,000 sq. ft. of retail and common area extending from Church Street to westerly boundary of parcel 3. May 1979.
- **Zoning Permit 79-150**; install a separate entrance to the restaurant with awning at the westerly end of Burlington Square to permit evening hours independently of hours of Burlington Square Mall. May 1979.
- **Zoning Permit 78-243**; retail fruits/vegetables/juices sold from movable cart in mall atrium. December 1978.
- **Zoning Permit 78-810**; Top of the Square Inc. to erect a 60' x 60' tent and a dressing tent on the Plaza level of the Burlington Square Mall, to be used for an assembly occupancy. May 1978.
- **Amended Certificate of Appropriateness, application #75-16**; change in design of car drive-in drop off point between Vermont Federal Savings and Loan Office building and parking garage. Specifically, double curb cut, larger turnaround to accommodate 12 cars instead of 5, landscaped island with stairwell leading to concourse level incorporated within island. March 1975.

- **Certificate of Appropriateness;** construction of a below grade retail mall with open plaza above as shown on the plans dated November 20, 1972 and revised on October 26, 1973 and prepared by the office of Mies Van der Rohe and Freeman, French, Freeman. March 1974.

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**Overview:** BTC Associates seek to amend the original redevelopment plan (17-0662CA/MA, as amended) that will result in:

- Overall reduction in square footage of approximately 25%. This is accompanied by a 50' reduction in building height.
- Replacement of office use with additional residential units.
- Increase in square footage of housing, and an accompanying increase in the number of residential units- both market rate and inclusionary. (426 total; 85 IZ).
- Eliminate the hotel use.

As this project is within Form District 6, a majority of the review is administrative. The applicants have provided the required Checklists for staff to review for compliance.

The **Design Advisory Board** reviewed the application at the January 26, 2021 meeting. In accordance with the Form Based Code, this review was limited to:

1. A recommendation relative to the request for additional height above that allowed by administrative authority;
2. A recommendation relative to review of proposed composite building materials; and
3. A recommendation relative to any request for DRB Alternative Compliance.

The limited project review received a recommendation for **approval** from the Design Advisory Board January 26, 2021.

The **Conservation Board** reviewed the amendment February 1, 2021, and recommended approval of the application as designed with the condition that covered short term bike parking be added to the extent feasible.

**Recommended motion: Certificate of Appropriateness Approval**, per the following Findings and Conditions:

**I. Findings**

**Article 2: Administrative Mechanisms**

**Section 2.7.8 Withhold Permit**

**Per this standard**, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Final Certificate of Occupancy for this permit. See attached list for guidance on open permits/violations. **Affirmative finding as conditioned.**

**Article 3: Applications, Permits and Project Reviews**

**Section 3.2.1 Pre-Application Conferences**

**(d) Pre-application Neighborhood Meeting**

*A Pre-Application Public Neighborhood Meeting shall be required for all development involving the construction of five (5) or more dwelling units and/or ten thousand (10,000) s.f. or more of gross floor area of non-residential development in order to allow neighbors to become aware of potential development projects at an early stage of a development's conceptual design and for applicants to take into consideration neighborhood comments and concerns. Procedures and requirements regarding matters including but not limited to scheduling, location, public notice, and documentation shall be set forth by the department of planning and zoning.*

Two well attended public meetings coordinated through CEDO were held on January 30, 2020, to update the public on the project status and solicit comment. An additional public meeting was held on February 27, 2020, following written notification of abutters. On October 7, 2020, the applicant team presented to the Wards 2 and 3 NPA after implementing some program changes and minor changes to the exterior enclosure. Attendance records and public meeting certifications are attachments 6h-1 and 6h-2 (p. 458, narrative). **Affirmative finding.**

### **Part 3: Impact Fees**

*Any new development or additions to existing buildings which result in new dwelling units or in new nonresidential buildings square footage are subject to impact fees as is any change of use which results in an added impact.*

Impact Fees will be recalculated for the gross new area, with credit given for existing area. The applicant shall confirm existing area (for a credit) and proposed area/uses for staff calculation of required Impact Fees. Projects containing newly constructed units that are affordable for households as described within this section are eligible for a waiver of impact fees for that portion of the project. The applicant is encouraged to consult with the Housing Trust Fund Manager to identify area and potential waiver allowance. **Affirmative finding as conditioned.**

### **Section 3.3.8 Time and Place of Payment**

*Impact fees must be paid to the city's chief administrative officer/city treasurer according to the following schedule:*

- (a) New Buildings: Impact fees must be paid at least seven (7) days prior to occupancy of a new building or any portion thereof.*

**Affirmative finding as conditioned.**

### **Part 5: Major Impact**

This section is included to reflect variations from the original approval created by the changes in programming and unit count.

#### **(b) Major Impact Review Standards**

*1. Not result in undue water, air, or noise pollution;*

The project will manage stormwater runoff via filtering through a green roof, streetscape stormwater treatment features (pervious pavers and vegetated filtration planters) and attenuated storage in below grade holding tanks. See Sec. 6.0 (p. 51, narrative) of the project submission documents and CDO Section 5.5.3 for further discussion of stormwater management. Final approval of the system design by the City's Stormwater Program will be required. See analysis of noise p. 446-447 and dust p. 457, narrative. **Affirmative finding as conditioned.**

*2. Have sufficient water available for its needs;*

At the time of this report preparation, studies have been shared with Burlington's Department of Water Resources reflecting the revised conditions. A January 13, 2021 email from Steven Roy, City Water Resources Department, confirmed the continued validity of an allocation letter issued in March 2020 with a three year life. Final approval of the system design by the City's Water Resources Division will be required. **Affirmative finding as conditioned.**

*3. Not unreasonably burden the city's present or future water supply or distribution system;*

The project site has existing waterline to the north and south with a new municipal waterline proposed in the new section of Saint Paul Street to the east. The new line will improve the downtown distribution system connectivity. Final approval of the system design by the City's Water Resources Division will be required. **Affirmative finding as conditioned.**

*4. Not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result; See Sec. 5.5.3.*

*5. Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways or other means of transportation, existing or proposed;*

The reconnection of St. Paul Street and Pine Street between Cherry and Bank will restore the original grid network in the downtown; providing an increase in circulation paths around the project site. This is within the downtown, where exists a dense network of sidewalks, paths, bicycle corridors and a street web that accommodate many opportunities for passage.

Additionally, the Downtown Transit Center is immediately adjacent to the project site, completing the link to mass transit. Reference is made to the submitted Traffic Impact Study, p. 56-444, narrative.) The Department of Public Works in a letter dated February 21, 2017 from Norman J. Baldwin, City Engineer/Ass't Director of DPW and Laura K. Wheelock, P.E. Public Works Engineer to the City of Burlington Planning & Zoning and to Don Sinex, BTC/Devonwood, indicated that it had reviewed the applicant's traffic impact study and found that the impacts from this development can be absorbed by the city's street network, and that impact on levels of service, queue length and overall delay at several key intersections are minor or moderate. This study was revised to reflect the changed programming within this application, and interstitial modeling that was performed February and October 2020. The March 2020 development plan was anticipated to generate 331 new trips during the weekday morning peak hour and 508 new trips during the weekday evening peak hour. The current redevelopment plan is anticipated to generate 229 new trips during the weekday morning peak hour and 383 new trips during the weekday evening peak hour. With the modification to the development plan, the current development plan is anticipated to reduce the new trips by 102 trips during the weekday morning peak hour and 125 trips during the weekday evening peak hour for all movements (entering and exiting). A 2.19.2021 email from Norman Baldwin and Laura Wheelock (DPW) indicated they are working with Clough Harbour & Associates in review of the revised traffic impact study. DPW acceptance of the revised TIS will be required.

Final approval of the street and streetscape design by the City's Public Works Department will be required. Impact fees will be paid. **Affirmative finding as conditioned.**

*6. Not cause an unreasonable burden on the city's ability to provide educational services;*

See Section 6.6 (p. 53) in submission narrative for enhanced discussion. An estimated number of school age children in this development remains at 18. This represents less than ½ % of the current enrollment and should not cause an unreasonable burden on the City's ability to provide educational services. Communication from Burlington School District confirmed an ability to provide services to the anticipated new student count from this development. (Original letter dated February 14, 2017.) Impact fees will be paid to help offset impacts on the school system.

**Affirmative finding as conditioned.**

*7. Not place an unreasonable burden on the city's ability to provide municipal services;*

All affected City Departments (Parks & Recreation, Fire, Police, Electric, CEDO, Planning & Zoning, School, and Public Works) were involved in the review of this project and have participated in the original interdepartmental Technical Review (January 14, 2016). Ability to serve letters were required to assure departmental satisfaction of the plan. Assurance of services were received from Burlington Electric Department, Burlington Telecom, Parks and Recreation, Burlington School Department, the fire marshal's office, Burlington Police Department and Vermont Gas. Affected city departments have been informed of the amended project application and have been provided opportunity to comment as reflected in these findings. Any new impacts on city services will be offset through the payment of required Impact Fees. **Affirmative finding as conditioned.**

*8. Not have an undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, nor on the scenic or natural beauty of the area or any part of the city;*

The project site is a city block that was razed and reconfigured during Burlington's 1960's Urban Development plan. It was at that time that the segments of St. Paul and Pine Streets were eliminated in favor of a larger redevelopment site. The site is significantly disturbed and all original buildings removed earlier.

Although the south side of Bank Street is within the Church Street Historic District and includes historic structures, the development parcel itself was assessed in 2003 and 2008 during preparation of the Church Street Historic District nomination and was deemed ineligible for listing on the National Register of Historic Places. The existing retail mall has no historic significance.

The project area remains within an existing streetscape that includes large, multistory newer construction (100 Bank Street on the west, 150 Bank and 76 St. Paul (Keybank) on the east/southeast.) Development at 75 Cherry Street will restore sections of Pine and St. Paul Street (original circulation prior to Urban Renewal), returning the travel pattern consistent with its earlier configuration. There will be no shadow impacts on the south side of Bank Street from the proposed development. Existing historic structures along Bank Street, which have faced modern infill for 40+ years will remain undisturbed, unaltered and intact. New development will enhance the streetscape, providing a more enjoyable pedestrian experience; restore original traffic circulation patterns and replace non-historic development that has deadened the street wall on Bank Street. The project proposes no undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, or scenic or natural beauty of the area.

**Affirmative finding.**



9. *Not have an undue adverse effect on the city's present or future growth patterns nor on the city's fiscal ability to accommodate such growth, nor on the city's investment in public services and facilities;*

The proposed redevelopment is located within the city's downtown core; an area targeted for high intensity mixed use development. The project is consistent with many of the goals identified in *PlanBTV* and the Municipal Development Plan relative to concentrated growth in the urban core. City infrastructure improvements to support the project are linked to Tax Increment Financing (TIF), approved by the voters November 8, 2016. Impact Fees will be assessed to address additional related impacts of the redevelopment. **Affirmative finding as conditioned.**

10. *Be in substantial conformance with the city's municipal development plan;*

See Section 6.10, p. 53 for the applicant's response. An entire section of *PlanBTV* is dedicated to the redevelopment of the downtown mall and potential improvements. The plan calls for creation of additional downtown housing, reconnecting the street grid (cut off during urban renewal), new strategic infill, and improved street life particularly along Cherry Street and Bank Street. The proposed redevelopment addresses each of these targeted items. A major component of the project is to provide a significant number of new housing units. The project as currently planned contains a total of 426 units. There are 7 3-bedroom apartments, 88 2-bedroom apartments, 223 1-bedroom apartments, and 108 studio apartments out of which 85 units (24 2BRs, 24 1BRs, and 7 studios) will be permanently affordable.

While the project will add some retail jobs, the Pine Street and St. Paul Street are to be reconnected. The project remains a comprehensive redevelopment of an entire city block; re-framed by Pine and St. Paul Streets. The redevelopment introduces a mix of uses and streetscape improvements on all four street frontages.

Additionally, the proposal complements the Municipal Development Plan, as revised as *planBTV, 2019 Update* in these specific areas:

- Encourage infill and redevelopment within the Downtown Core (*Burlington as a dynamic city*, Section 8.2)
- Examine opportunities for higher-density, mixed use development along major multi-modal corridors (*Burlington as a dynamic city*, Section 8.5)
- Expand Stormwater Management measures in new and existing development (*Burlington as a distinctive city*, Section 1.3)
- Green and High Performing buildings (*Burlington as a dynamic city*, Section 6.4)
- Ensure all public buildings, facilities, streets and pathways meet and exceed requirements for accessibility (*Burlington as an inclusive city*, Section 13.2)
- Restore, fill critical missing gaps in city street network (*Burlington as a connected city*, Section 17.10.)

**Affirmative finding.**

11. *Not have an undue adverse impact on the present or projected housing needs of the city in terms of amount, type, affordability and location;*

*PlanBTV: Downtown & Waterfront* calls for more housing downtown generally and specifically within the mall property. The submitted redevelopment application identifies a total of 426 housing units broken down as follows:

- 7 three bedroom units
- 88 two bedroom units
- 223 One bedroom units
- 108 studio units

Of the total, 85 units (24 2- bedroom, 24 1- bedroom, and 7 studios) will be permanently affordable. This constitutes more than 20% IZ. Satisfaction of the requirements of Article 9 will be required via a letter of Compliance from the city's Housing Trust Fund Manager.

**Affirmative finding as conditioned.**

*12. Not have an undue adverse impact on the present or projected park and recreation needs of the city.*

Residents of the new dwelling units and even employees within the new commercial spaces will likely utilize the city's park and recreation facilities. Park impact fees will be paid to help offset any related impact on park needs. An ability to serve letter was previously obtained from the Department of Parks and Recreation. **Affirmative finding.**

### **Section 3.5.6 (c)**

*In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:*

*1. Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.*

A dust mitigation plan for construction work was approved in the original permit. Construction would involve equipment typical of mixed-use development in the area, and would not occur during the hours of 9:00 pm and 7:00 am which is prohibited by the Burlington Noise Code (Section 21-13.)

Vehicles and headlights within the parking area are screened from public view with building façade elements consistent with the scale and materials of the overall development.

Waste Management is outlined in the application (Narrative, p. 451); defined at the north residential building within a loading dock on Pine Street. For the south building, trash, recycling and compost will be collected by each tenant and transported to the loading dock on Bank Street.

Standard mechanical equipment and meters will be located on the building roofs and within loading dock area and would be fully enclosed which would substantially reduce any noise or visual impact to the community.

While the development is anticipated to increase traffic volumes (see Traffic Impact Study, p56-444 of project narrative), the increase in noise is anticipated to be negligible for traffic sources. See p. 447 for Noise Impact assessment.

VHB's noise assessment concluded that the proposed development would not result in adverse noise impact according to Burlington's Noise Code as it relates to stationary sources.

**Affirmative finding.**

*2. Time limits for construction.*

Construction and occupancy are anticipated to occur in **four phases**.

From p. 445 of the application narrative, Phased occupancy based on the following:

Construction Start – September 15, 2021

North Building/West - **Phase 1/TCO 1 (20 mos.) May 15, 2023**

Construct Western portion of the North Building (west of elevator core)

Basement level- Mech./Utilities/Storage ; Parking Level P1

Western ½ of P2 Garage, North of Garage Break line

Residential floors L1-8, Residential loading dock, Roof Top Mech.

Retail – Western phase areas facing Cherry Street

North Building/East - **Phase 2 /TCO 2 (+18 mos.) Nov. 15, 2024**

Construct Eastern half of the North Building (east of elevator core)

Residential Floors L1- 8, Residential loading dock, Roof Top Mech.

Finish Garage levels P2 & P3

Retail – Eastern phase areas facing Cherry Street

South Building - **Phase 3/TCO 3 (+18 mos.) May 15, 2026**

Retail on Bank, Residential Lobby, Loading Dock.

Parking Garage – Remaining bays of Garage, South of Garage break line

Level 1 – Office/Meeting space/Community Space/ Amenity

South Building - **Phase 4/ TCO 4 (+6 mos.) Nov. 15, 2026**

Complete Residential fit up L2 to L8

Restaurant and Observation Deck on L9 ; Roof Top Mech.

New St. Paul and New Pine Ground Level Spaces.

Any phasing schedule is at the discretion of the DRB. **Affirmative finding as conditioned.**

*3. Hours of operation and/or construction to reduce the impacts on surrounding properties.*

The applicant was approved for an aggressive program with construction proposed to occur 7 days/week. Per that approval:

- Proposed normal work hours
  - ◆ M-F 7:00 am – 7:00 pm
  - ◆ Saturday 7:00 am – 4:00 pm.
- Proposed extended work hours
  - ◆ (4) 24- hour periods per month throughout the duration of the project utilized for long-duration (concrete finishing), large equipment hoisting (MEP) or other items that require longer than normal work hours.
  - ◆ Relieves daytime impacts during holidays, peak tourist and/or event periods.

Monday through Friday construction shall be limited to 7am to 7pm.

Saturday construction, including exterior work, from 7am-4pm is acceptable in order to help shorten the overall construction period, and up to 4 24-hr periods per month is acceptable after consultation with DPW and CEDO to minimize disruption of downtown residents, events and businesses. No construction activity shall occur on Sundays.

As part of that approval, the applicant presented to staff a plan for use of shuttles and remote parking by no less than 50% of construction workers as presented during the original Public Hearing to minimize impact on downtown parking resources.

None of the proposed uses (retail, restaurant, community space and residential) are conditional. Therefore, limitations of days and hours of operation are not warranted. **Affirmative finding.**

*4. That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions;*

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time. **Affirmative finding as conditioned.**  
*and,*

*5. Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*

This remains at the discretion of the DRB, and results in conditions imposed.

## **Article 5: Citywide General Regulations**

### **Section 5.2.3 Lot Coverage Requirements**

This is covered in the Checklists.

### **Section. 5.2.4 Buildable Area Calculation**

Not applicable in the FD6 Zoning District.

### **Section 5.2.5 Setbacks**

*(a) Setbacks Required*

This is covered in the Checklists.

### **Section 5.2.6 Building Height Limits**

*(a) Height Measurement*

The parcel is within the Special Height Area FD6A, with a by-right height of 6 stories or 65', or DRB review of height up to 14 stories or 160'. The applicants are requesting additional height above the by-right amount, subject to DRB review under Section 14.6.4 (f), below. Proposed building heights are: Cherry St grade to penthouse 123'; St Paul Street, grade to penthouse 124'; Pine Street grade to penthouse 129'; Bank Street grade to penhouse 143'. See Section 14.34 (d) below for measurements to the roof decks. This amendment reduces

the height of the building originally approved March 17, 2017. All height measurements are substantially below the 160' maximum height. **Affirmative finding as conditioned.**

(b) Exceptions to Height Limits

*Ornamental and symbolic architectural features, including towers, spires, cupolas, belfries and domes; greenhouses, garden sheds, gazebos, rooftop gardens, terraces, and similar features; and fully enclosed stair towers, elevator towers and mechanical rooms, where such features are not used for human occupancy or commercial identification, are exempt from specific height limitations but shall be subject to the design review provisions of Art. 3 and 6. Such features and structures shall be designed and clad in a manner consistent and complementary with the overall architecture of the building.*

Mechanical penthouses are proposed; however they do not exceed allowable building heights. **Not applicable.**

1. *Exposed mechanical equipment shall be allowed to encroach beyond the maximum building height by no more than 15-feet provided that portion exceeding the height limit does not exceed 20% of the roof area.*

*Exposed mechanical equipment shall be fully screened on all sides to the full height of the equipment, and positioned on the roof to be unseen from view at the street level. Screening may consist of parapets, screens, latticework, louvered panels, and/or other similar methods. Such features and structures shall be designed and clad in a manner consistent and complementary with the overall architecture of the building*

*Where mechanical equipment is incorporated into and hidden within the roof structure, or a mechanical penthouse setback a minimum of 10-ft from the roof edge, no such area limit shall apply and the structure shall be considered pursuant with 4 above.*

All height measurements, including the penthouse and mechanical equipment, fall below the maximum allowable building height for the Special Height district.

Rooftop equipment is fully enclosed within a mechanical penthouse. As required, the penthouse observes a 10' setback from the roof edge. **Affirmative finding.**

2. *All forms of communications equipment including satellite dish antennae shall not be exempt from height limitations except as provided in Sec 5.4.7 of this Article. **Not applicable.***
3. *The administrative officer may allow for up to a 5% variation in the maximum building height to account for grade changes across the site. In no event however, shall such additional height enable the creation of an additional story beyond the maximum permitted.*

No additional allowance is required. **Affirmative finding.**

### **Section 5.2.7, Density and Intensity of Development Calculations**

The proposed FAR for Adjusted Parcel 2 is:  $703,206 / 109,779 = 6.41$  PROPOSED FAR. The Form Based Code (Downtown Code) does not have specific FAR requirements but the project complies with the building bulk requirements of 14.3.4-D and is covered in the Checklists.

#### **Section 5.4.8 Historic Buildings and Districts**

75 Cherry Street / Burlington Town Center Mall was evaluated during the preparation of the Church Street Historic District nomination to the National Register of Historic Places in 2003 and 2008. It was confirmed that the property is not eligible for the National Register, and has been deemed non-contributing to the nomination. The project development therefore does not meet applicability standards of this section. **Not applicable.**

#### **Section 5.5.1 Nuisance Regulations**

No part of the application indicates that nuisance impacts may result. No industrial or other commercial uses typically associated with heat, glare, emissions, or noise are included in the application. The application materials include an evaluation of potential noise impacts relative to Burlington's noise ordinance. Parking areas, trash/recycling facilities, and loading docks will be internal to the proposed building, thereby limiting outdoor noise. Mechanical equipment will be located on the rooftops within fully enclosed penthouses. Noise from mechanical units will, therefore, be substantially less than ground mounted and/or unenclosed mechanical units.

**Affirmative finding.**

#### **Section 5.5.2 Outdoor Lighting**

New outdoor lighting is included in this proposal. New pole-mounted lights are proposed within the public street rights-of-way. A fixture cutsheet has been provided, and illumination levels are depicted in a photometric plan for the site. Revised lighting/photometrics have been provided and reviewed by Burlington Electric Department to assure compliance with their central business district lighting standards. A response from Andrew Ellison, BED on 2.18.2021 indicated as long as the street/sidewalk layout remains the same, the photometrics would still be valid. If there are any changes to the alignment of the streets/sidewalks, the photometrics would need to be recalculated. Other lighting includes building entryway lighting and under-canopy lighting. Cutsheets were previously provided for both fixtures. The current photometric plan depicts acceptable illumination levels at all building entries. Parking garage lighting has adjusted downward to meet the requirements of IESNA 8-18, *Recommended Maintained Illuminance of Parking Garages*. The 2018 standard emphasizes energy conservation and references "lighting controls that sense activity." Such controls would be an energy conservation measure and would control unwanted illumination into the neighborhood and decrease skyglow. An acceptable LED fixture is proposed. The light source(s) of interior lighting within the parking garage should be shielded from view from street-level public vantage points. **Affirmative finding as conditioned.**

#### **Section 5.5.3 Stormwater and Erosion Control**

A comprehensive stormwater management plan was included and approved within the original permit. Presently, there is virtually no onsite stormwater management. Runoff flows without attenuation into the city's receiving sewers. As proposed, the ~3.5-acre project site will be overhauled to capture and attenuate stormwater flows to green meadow conditions prior to discharge into the city system. Doing so will be of significant benefit to the city's receiving system. The proposal includes large underground cisterns to capture most of the flows and sand filters to treat stormwater prior to discharge at a controlled rate into the city system. Green roofs are also included. They, too, will capture and control release of stormwater with the added benefit of evapotranspiration. On the ground, areas of pervious pavement, in combination with

oversized soil chambers for new street trees, will also capture and attenuate stormwater. Engineering Ventures representative Kevin Worden presented that not much has changed since that initial approval.

A complete, updated Stormwater Management Plan Package has been compiled (2.16.2021) and is comprised of:

- a. An updated Drainage Analysis Report with narrative description, calculations and hydrologic modeling.
- b. Civil Plan Set, dated 02/16/2021
- c. Stormwater Operations and Maintenance Plan
- d. Stormwater Operations and Maintenance Manual
- e. Specification sections relevant to stormwater infrastructure work.

Final approval by the city's stormwater program is required.

A detailed construction site erosion prevention and sediment control (EPSC) plan is included in the project plans. It includes a variety of standard EPSC practices. The 2017 approval included a comprehensive Contractor Dust Mitigation and Control Measures plan to limit offsite impacts associated with construction and earth disturbance. That remains in effect. As with stormwater management, the EPSC plan is subject to final approval by the city's stormwater program.

**Affirmative finding as conditioned.**

## **Article 8: Parking**

### **Part 1 General Requirements**

#### **Section 8.1.3 Parking Districts**

##### **c) Multi-Modal Mixed Use**

Zoning Amendment 20-04 created the *Multi Modal Mixed Use Parking District*, which eliminated minimum parking standards in FD6. A Judgment Order issued by Vermont Superior Court, Environmental Division July 17, 2017 mandated that 200 additional parking spaces at the cellar level would be provided for this redevelopment; this requirement remains with the permit as amended.

#### **Section 8.1.6 Affordable Housing and Historic Buildings Exemption**

The project will provide an estimated 85 perpetually affordable housing units. As with the other uses, there are no minimum parking requirements for affordable units.

#### **Section 8.1.8 Minimum Off-Street Parking Requirements**

##### **Table 8.1.8-1 Minimum Parking Requirements**

There are no minimum parking requirements for residential, restaurant, community center, or office in the MMMU Parking District. A Transportation Demand Management Plan is a requirement, see Section 8.1.16, below. The permit retains the obligation to provide 200 parking spaces, as determined by the Judgment Order of 2017. **Affirmative finding as conditioned.**

#### **Section 8.1.9 Maximum Off-site Spaces**

Maximum parking standards for the MMMUPD are equal to 100% of the required minimum parking under the Shared Use Parking District.

An analysis of what the parking requirements are under the Shared Use Parking District are as follows:

Use	Shared Use req/t	Area / Units	Total
Residential	1/unit - IZ	426-85 (IZ)	341
Restaurant	3/1,000	4250 sf	13
Retail	2/1,000	41,300 sf	87
Community Center	2.5/1,000	3,150 sf	8
Office/co-working	2/1,000	9,084	18
Total max parking			467
Total Parking proposed			422

The proposed parking count does not exceed the Maximum Off-site space limitation.

**Affirmative finding.**

**(a) Exemptions**

No exemptions are sought. **Not applicable.**

**Section 8.1.10 Off-Street Loading Requirements**

Does not apply to the Multi Modal Mixed Use Parking District. **Not applicable.**

**Section 8.1.11 Parking Dimensional Requirements**

Parking decks and dimensions largely follow the 2017 approved plan. Parking spaces and aisle width are compliant with the revised parking dimensions of ZA20-04.

(Standard 90° space, 9 x 18, 8 ½ x 18 residential use; compact 8 x 16, two-way aisle width 23’);

**Affirmative finding.**

**Section 8.1.12 Limitations, Location, Use of Parking Facilities**

Not applicable.

**Section 8.1.13, Parking for Disabled Persons**

Handicap parking is provided on P1 and P2. Compliance with ADA standards is under the jurisdiction of the building inspector. **Affirmative finding as conditioned.**

**Section 8.1.14 Stacked and Tandem Parking Restrictions**

Tandem parking was previously approved for this redevelopment. Tandem spaces are allowed per-unit for the residences and for dedicated employee parking. **Affirmative finding.**

**Section 8.1.15 Parking Waivers and Parking Management Plans**

No waivers are sought. See Section 8.1.6, below for Transportation Demand Management.

**Section 8.1.16 Transportation Demand Management**

(b) Applicability: *A Transportation Demand Management Program shall be required for all projects located in the Multimodal Mixed Use Parking District (see Sec. 8.1.3(c)), and involving any one or more of the following:*



<b>Dwelling Units</b>	Creation of ten (10) or more dwelling units
<b>Non-residential or Mixed Use Development</b>	A building footprint of eight thousand (8,000) s.f. or more; or, the creation of fifteen thousand (15,000) s.f. or more of gross floor area.

As part of the Multi Modal Mixed Use Parking District, and qualifying under the applicability standards listed above, a TDM is required.

The applicant outlines the TDM on p. 456 of the narrative:

**(b) Transportation Demand Management (TDM) Program:**

*A TDM Program shall include each of the following elements at a minimum:*

*a. Outreach and Education:*

The applicants propose:

- a. assigning a Transportation Coordinator from building management staff who will manage defined activities and represent tenants in a Transportation Management Association to accomplish the following:
  - i. Ensure tenants understand parking, permitting, and options of the TDM.
  - ii. Organize and hold an annual meeting for tenants, residents and staff to present TDM strategies and encourage use and participation.
  - iii. Electronically distribute a travel and transportation survey to tenants, residents and staff annually.
  - iv. Report TDM offerings.

*b. TDM Strategies*

*In addition to compliance with the on-site Bicycle Parking requirements found in Article 8, Part 2, the following TDM strategies shall also be included at a minimum for a period of 10 years from receipt of a Certificate of Occupancy as follows:*

- i. *GMT Transit passes shall be provided to all tenants and employees for free for the first year of occupancy or employment, and at a minimum discount of 50% for every year thereafter; and,*
- ii. *A car share membership shall be offered to all tenants and employees for free for the first two years of occupancy or employment, and at a minimum discount of 50% for every year thereafter; or,*
- iii. *In lieu of i and ii above, maintain an ongoing and active membership in a Transportation Management Association (TMA) that offers equivalent TDM strategies or better.*

The applicant will meet the GMT transit pass requirement, and a “Share a Little” membership to CarShare Vermont (or an alternate provider should one be available) and provide 5 parking spaces in the building’s parking structure for a car-share provider. As of this date (2.24.2021), CarShare has not been contacted about this application; the applicants will need to engage this provider or another similar agency to meet standard b) ii, above.

*c. Parking Management:*

*Where on-site or off-site parking is also made available:*

- i. *Conduct parking utilization studies at least annually for a period of 10 years from receipt of a Certificate of Occupancy;*

The applicant proposes annual reporting for 10 years after occupancy of Phase 3, which includes completion of the parking facilities.

- ii. *With the exception of permanently affordable housing units, the cost of parking shall be un-bundled from all residential and non-residential leases and deeds and made available at a market rate;*

The cost of parking will not be included in the rent charged for any apartment.

- iii. *Where parking spaces are made available to off-site users, parking spaces may be made available by a renewable lease, provided the term of any lease does not exceed one (1) year;*

Previous agreements will be upheld in the terms of parking made available to tenants of the abutting structure at 100 Bank Street. Any additional leases shall be bound by this standard. and,

- iv. *Priority parking spaces - located in closest proximity to a primary building entrance and/or public street frontage - shall be made available for each of the following:*
  - 1. *Handicapped spaces;*
  - 2. *Bicycles, scooters, and motorcycles spaces;*
  - 3. *Car-share: where 1 space must be offered for every 20 residential units, not to exceed a total of 5 spaces, subject to an agreement with a car-share provider; and,*
  - 4. *Carpool and/or Vanpool vehicles: where more than 20 spaces are available for non-residential uses. In such cases, 5 spaces or 5% of the parking spaces on site, whichever is less, must be reserved for carpool/vanpool use before 9:00 AM on weekdays.*

The garage is accessible from the building as well as from public streets. All requirements for the provision of handicap parking are assured, as are short and long term bicycle parking. Motorcycle parking is provided. 5 CarShare spaces will be located near street or building entrances in coordination with the CarShare provider. It is possible to accommodate up to 5 Vanpool spaces for use before 9:00 am on weekdays.

d. *TDM Agreement:*

*Each TDM Plan shall include a signed commitment to and acknowledgement of each of the following on a form provided by the Administrative Officer:*

- i. *Commitment to ongoing implementation of the TDM requirements as set forth above;*
- ii. *Acknowledgement that the project has no claim to the ongoing availability of nearby on-street public parking, and that, as is the case with other on-street public parking, the City retains the right to charge for or remove such on-street parking at any time;*
- iii. *Acknowledgement that failure to maintain transportation demand management as required above is a violation of this ordinance, and understanding that, pursuant to Sec. 2.7.8 of this ordinance, no zoning permit or certificate of occupancy may be granted until any such violation has been remedied; and,*

- iv. *Commitment to notify any subsequent owners and tenants in writing of their obligations under this section as part of any purchase and sale and/or lease agreements.*

The applicant will be required to formally commit to implementation of the TDM requirements.

*Review and Enforcement: The Administrative Officer shall be responsible for determining compliance with the TDM Program requirements as set forth above, and ongoing implementation shall be included as a condition of any discretionary or administrative permit required for development subject to the conditions of this Section.*

*Failure to maintain a TDM Program as required above shall be a violation of this ordinance, and pursuant to Sec. 2.7.8 of this ordinance no zoning permit or certificate of occupancy may be granted without a TDM Program in effect.*

The TDM will be adopted as a condition of the permit.

**Affirmative finding as conditioned.**

## Part 2: Bicycle Parking

Total required and proposed bicycle parking is 339. This is subdivided into 273 long term spaces and 66 short term spaces. See table below. The long-term spaces are located on the at grade level of car parking, adjacent to the Pine Street parking pedestrian access and includes shower and changing facilities. Short term spaces are located at streetscape, adjacent to major entry points and supplemented with spaces at entry niches within the subject lot and bike racks inside the parking structure. See LA-200 Layout Plan. Locations of short-term spaces will be coordinated with DPW and the Great Streets initiative.

### Bike Parking- Long Term

Residential bedrooms	525	0.5	bedroom	263
Office & Meeting Space	9500	.0002	GSF	2
Community Space	3150	0.00005	sf	1
Retail	41,300	0.00008333	sf	3
Restaurant Seating	4250	0.001	sf	4
				<b>273</b>

Bike Parking- Showers	Nonres. Spaces	Required Showers
Requirement based on table 8.2.8-1, # nonresidential bike parking spaces =	9	2

### Bike Parking- Short Term

Residential Units	426	0.1	Units	43
Office & Meeting Space	9500	.0001	GSF	1
Community Space	3150	0.0001	sf	1
Retail	41,300	0.0005	sf	21
Restaurant Seating	4250	0.002	sf	9
Total Short Term Bike Spaces (to be on streetscape and in vestibules)				<b>75</b>

The Conservation Board recommended approval, with the condition that covered short term bike parking be added to the extent feasible. Some short term (covered) spaces are already planned at bike racks within the parking structure.

**Affirmative finding.**

## **Article 9: Inclusionary and Replacement Housing**

### **Section 9.1.5 Applicability**

As the proposed development includes more than 5 new dwelling units, it is subject to the inclusionary housing provisions of this Article. In this case, a total of 426 residential units is proposed. Typically, 15% of housing units must be inclusionary, but this number may vary depending on price points of the market-rate units. This application proposes 85 inclusionary units (20% of the total) to be integrated throughout the residential portion of the development. Final written approval of the inclusionary housing approval from the manager of the city's Housing Trust Fund is required. **Affirmative finding as conditioned.**

### **Section 9.1.17 Review of Proposal for Phasing**

The application contains a phasing schedule (p. 445, narrative) that articulates 4 distinct phases. Residential construction and fit-up span phases 1, 2 and 4. The inclusionary units are interspersed throughout the residential components of the development. Per this criterion, the inclusionary units must be made available for occupancy on a schedule concurrent with the market-rate units. **Affirmative finding as conditioned.**

### **Section 9.1.18 Timeline for Availability/Phasing of Inclusionary Units for Issuance of Certificate of Occupancy**

See Sec. 9.1.17 above.

## **Article 10: Subdivision**

### **Section 10.1.15 Lot Line Adjustments**

Boundary line adjustments were approved in the original March 2017 permit. The plot plan has been recorded in the City Land Records and is final.

### **Section 10.1.10 Performance Bond and Guarantee of Completion**

As was previously approved, new public improvements (city streets and related infrastructure) are included in this project, this criterion for a performance guarantee remains in effect.

**Affirmative finding as conditioned.**

### **Section 10.1.12 Dedication of Public Streets**

As new public streets are included in this project, procedures for acceptance outlined in this section remain in effect. **Affirmative finding as conditioned.**

## **Article 14: Form Based Code**

### **Article 14 Downtown Code**

### **Section 14.3.4-D Building Form (Form District 6)**

## 14.3.4-D- BUILDING FORM

### BUILDING HEIGHT

A

Principal  
Buildings

Subject to Administrative Review:

- 3 Stories min.
- 4 Stories max., not to exceed 45-feet within 20-feet of the Frontage Line on the Church Street Marketplace<sup>1</sup>; otherwise,
- 6 Stories max., not to exceed 65-feet

Subject to DRB Review per Sec. 14.6.4 f:

- 10 Stories max., not to exceed 105-feet; or,
- 14 Stories max, not to exceed 160-feet <sup>2</sup>

<sup>2</sup> Subject to Regulating Plan Special Requirements Map 2 – Specific Height Areas (See Sec. 14.2.6), a Building with a Principal Frontage in the area identified as “A” may be increased to a maximum of 14 Stories not to exceed 160-feet.

The subject parcel is within the area identified as “A” on Map 2 – *Specific Height Areas* and is therefore eligible to request building height up to 160’ with DRB review.

The North residential building has a building height of ±107’2” to the top of the roof deck of the highest occupied level from Cherry Street average grade; ±122’2” to roof deck of mechanical penthouse.

The South residential building is ±127’10” from Bank Street average grade to the restaurant/observation deck roof, and ±142’10” to the mechanical penthouse roof. All heights are below the 160’ maximum allowable.

### Section 14.6.4 Building Height

#### (f) Design and Public Space Standards Required for Additional Building Height

*i. Design Standards: The maximum building height and mass is permitted By Right by the underlying Form District, as may be modified by the chosen Building Type and Frontage Type. However, there are a number of ways that building shape, articulations, and choice of materials can be used to reduce the perceived height and mass of taller buildings, and ensure a high quality of design that complements the character of the Downtown and Waterfront area. After consultation with the Design Advisory Board and a Public Hearing, the Development Review Board shall evaluate any proposal seeking additional Building height under each of the following additional design standards, and find affirmatively that:*

- a. The proposed building presents a design that emphasizes slender, vertically-oriented proportions to assure a rich visually interesting experience as viewed within the context of the downtown skyline; reinforces opportunities for establishing points of reference for visual orientation; and provides visual interest and human scale at the pedestrian level through the use of a variety of scales, materials, fenestration, massing, or other architectural design techniques;*

The building volume of the north residential building steps back at the 5<sup>th</sup> floor and is vertically accentuated with changes in the building plane, arrangement of windows, and introduction of varying primary materials. The roofline is accentuated with a bold cornice projection on different planes, breaking the massing up into readable building volumes. The cornice both caps the massing, and leads the eye down the street supporting and strengthening the street plane.





The pedestrian level is enhanced with broad glazing to welcome and warm the streetfront energizing the pedestrian experience; strong material interplay delineates both building volume and division of segregate spaces. Vertical masonry piers draw the eye upward linking the lower pedestal to the upper, recessed stories.



The southern residential building has a defined and welcoming street presence, with a first and second story height that both strengthen the street wall as they mime the building heights of the existing buildings across Bank Street. The changing grade allows for the minimum 33' height to

enforce that street wall. The massing steps back above this floor, with a more uniform material palette that continues the vertical pier element seen in the northern building. The feeling is light and buoyant; a silvery silhouette on a largely glass pedestal. Both building volumes establish points of reference for visual orientation; and provide optical interest and human scale at the pedestrian level through the use of step backs, horizontal and vertical variation, selection of materials, and other architectural design techniques to reinforce the street wall and reduce the perceived height and mass of upper stories from the street level.

*and,*

- b. Upper story proportions of the building are oriented and tapered and/or separated into separate masses in order to retain sky view between individual building elements from the public thoroughfare.*

The north and south buildings are clearly divided into separate volumes, allowing sky views between building elements. The upper stories are stepped back on both the north and south buildings.



*The DRB may condition approval of additional building height by reducing the By-Right building mass by no more than 10% of the total floor area of the new floors enabled by granting the additional building height. In no case shall the maximum By-Right building height be reduced.*

The plan, as submitted, does not introduce such height that would suggest a necessary concomitant reduction in building mass. This amendment reduces the originally approved building height by 50’.

**Affirmative finding upon concurrence by the DRB.**

*ii. Active Public Space and Restrooms*

*A minimum of 20 sf/1,000 sf of the gross floor area above 85 feet shall be dedicated to active and publicly accessible upper story rooftops and terraces, and/or street-level public restrooms as follows:*

- a. Upper story rooftops and terraces must incorporate active public use such as outdoor dining with seating or other uses and activities that invite use by the public, and be located above the 7<sup>th</sup> floor. At least 25% of the space must be accessible to the general public during all regular business hours without expectation of payment or purchase.



A public observation deck is located on the 9<sup>th</sup> floor of the Bank Street (South) building consisting of an enclosed lobby and an exterior deck. Public access is via the Bank Street entry point. Public, gender-neutral toilet facilities are provided adjacent to the interior lobby.

- b. Public restroom may count towards the public space requirement above at a ratio of 10:1. Public restrooms must be located on the ground floor, have a minimum size of 50 sq. ft., be signed from the public street, be actively monitored and maintained, and be open to the public during all regular business hours. Placement of a public restroom in partnership with the City within an adjacent public space or the public ROW may be acceptable with the concurrence of the respective responsible City department and provided actual development costs and projected 20 year maintenance costs are paid by the applicant.

See above. **Affirmative finding.**

#### Section 14.4.13 Urban Design Standards

##### d) Building Materials

The following requirements regarding the selection and use of Building materials is intended to improve the physical quality and durability of buildings, enhance the pedestrian experience, and maintain the character of the downtown area.

- i. Primary Materials: not less than 80 percent of each street facing Façade shall be constructed of one or more Primary Materials comprised of tested and proved, high quality, durable, and natural products. For Facades over 100 square feet, more than one Primary Material shall be used. Changes between Primary Materials must occur only at inside corners. The following are considered acceptable Primary Materials:
- A. Brick and tile masonry
  - B. Native stone;
  - C. Wood – panels, clapboard or shingles;
  - D. Glass curtain wall and
  - E. Cementitious siding.



*vi. Alternate Materials*

*Alternate materials, including high quality synthetic materials may be approved by the Planning Director after seeking input from the Design Advisory Board. New materials must be considered equivalent or better than the materials listed above and must demonstrate successful, high quality local installation. Regionally available materials are preferred.*

Several materials are under consideration for the stone look panels, including ceramic products, sintered stone, and manufactured stone such as Arriscraft. As composites, they require review and recommendation by the Design Advisory Board.

Sintered stone itself is widely used in development and redevelopment projects. The applicant team provided samples to the DAB who, in turn, supported their use and recommended approval at their January 26, 2021 meeting. **Affirmative finding.**

**Section 14.7.3-Variation from the Form: Administrative Relief, DRB Alternative Compliance and Variances.**

*(b) Alternative Compliance Granted by the Development Review Board. Additional relief from the prescribed standards may be granted by the DRB as provided below.*

*i. DRB Alternative Compliance: Relief from any non-numerical standard, and any numerical standard by no more than 20% of such requirement or an additional 10% beyond any Administrative Relief permitted above, **may be granted by the Development Review Board** after review and recommendation by the Design Advisory Board and a Public Hearing. Decisions by the DRB regarding any Alternative Compliance granted shall be made in writing and upon affirmative findings that:*

- A. The relief sought is necessary in order to accommodate unique site and/or Building circumstances or opportunities;*
- B. The relief if granted is the minimum necessary to achieve the desired result;*
- C. The property will otherwise be developed consistent with the purpose of this ordinance the intent of the Form District, the intent and purpose of the section that the relief is being sought, and all other applicable standards;*
- D. The relief, if granted will not impose an undue adverse burden on existing or future development of adjacent properties; and*
- E. The relief if granted will yield a result equal to or better than strict compliance with the standard being relieved.*

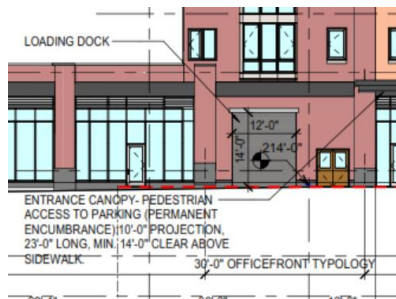
Alternative Compliance review was held for two standards at the January 26, 2021 DAB meeting.

**Section 14.6.7 Parking and Circulation**

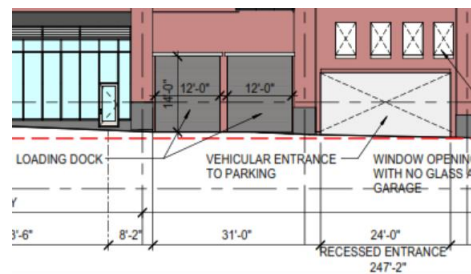
**(c) General Parking, Loading, Service and Driveway Standards**

*iv. Loading and service areas, overhead doors, and other service entries shall not be located on a primary Frontage or Façade where a rear Alley or secondary Frontage is available; and shall be screened from view by a Building or a Streetscreen. Where no alternative to a Primary Frontage or Façade is available, loading and service doors shall not exceed 12 feet in width and 16 feet clear height.*

The Bank Street loading dock was previously approved under 17-0662CA/MA as two openings, each 20'6" wide. The Bank Street loading dock may therefore be permitted up to that width.



St. Paul Street loading dock



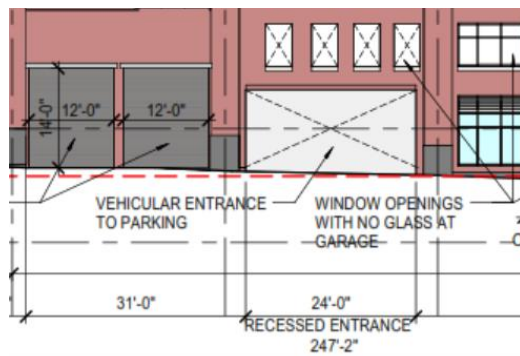
Pine Street loading dock

The applicants have asserted they **no longer have a need** for any Alternative Compliance relative to the proposed loading docks on St Paul and Pine Streets. Not applicable.

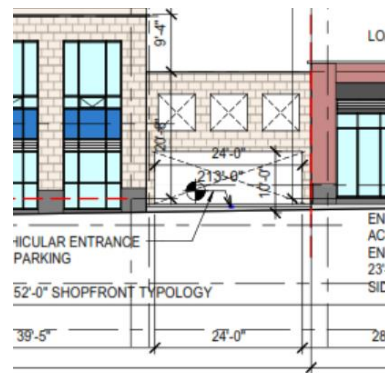
### (e) Parking Structures and Garages

- ii. *Façade openings shall be combined for ingress/egress, and shall not exceed 24 feet in width and 16 feet in clear height at the Frontage. Only one such opening per street Frontage may be permitted. Façade openings may be separated for ingress/egress where they access different Frontages.*

Although the plan set illustrates parking entries to be 24' in width, the applicant acknowledges that it may not be functionally possible. The two newly established streets (St. Paul, Pine) are quite narrow, and the Parking flow study for parking volumes in conjunction with the traffic study test the width limitation. A 20% maximum relief would offer an additional 4.8' width allowance or a maximum of **28' 9 19/32"**.



Pine Street parking access, detail.



St. Paul Street parking access, detail

The Design Advisory Board acknowledged the challenge of creating a two-way vehicular opening that would accommodate a segregated pedestrian walkway, a parking booth and mechanical entry arm within the confines of the 24' limitation, and have supported the requested relief. **Affirmative finding upon concurrence of the DRB.**

## **II. Conditions of Approval**

1. **Prior to release of the zoning permit**, the stormwater management plan and the erosion prevention and sediment control plan shall receive final written approval by the city's stormwater program.
2. Any changes to the originally approved street lighting plan will require written confirmation of the continued acceptability of the street lighting by Burlington Electric Department **prior to issuance of the zoning permit**.
3. Final acceptance by DPW of the Traffic Impact Study, as revised, shall be required **prior to release of the zoning permit**.
4. Changes within this amendment proposed for the parcels intended to be accepted as public rights-of-way must be accepted by the Department of Public Works **prior to release of the zoning permit**. This shall include the location of identified "areaways."
5. Written approval shall be received from the Water Resources Division **prior to release of the zoning permit** that this applicant has adequately addressed changed conditions relative to the increase in the number of residential units and the changed programming of the building. Reference is made to the communication of February 19, 2021 outlining specific concerns.
6. Impact fees must be paid **at least seven (7) days prior to issuance of a certificate of occupancy** of a new building or phase. Impact Fees will be calculated for the gross new area, with credit given for existing area. The applicant shall confirm those uses/areas for staff to calculate appropriate fees. Impact fees may be paid by project phase.
7. **Prior to issuance of a certificate of occupancy**, written approval of the inclusionary housing proposal by the manager of the city's Housing Trust Fund shall be obtained.
8. **Prior to issuance of the final certificate of occupancy**, any zoning permits for the property not yet closed out with final certificates of occupancy must be closed out, superseded or relinquished as needed.
9. Following the phased construction schedule, the permit shall be valid until **December 1, 2026**. This approval incorporates the 4-phase "Construction Phasing" schedule included in the application. Certificates of occupancy may be obtained for each separate phase as the project is under construction.
10. The applicant has been previously approved for extended construction hours. Unless specifically altered by the DRB, construction hours will be limited Monday-Friday 7:00 am – 7:00 pm, and Saturday work hours 7:00 am-4:00 pm. No construction shall occur on Sundays. Four limited 24-hour construction periods have previously been approved by the Board.
11. Per the requirements of Sec. 10.1.10, Performance Bond and Guarantee of Completion, a performance guarantee for all new public improvements shall be provided, subject to review and approval by the City Attorney.
12. As new public streets are included in this project, procedures for acceptance outlined in Sec. 10.1.12, Dedication of Public Streets, must be followed

13. Any and all construction within the public street right-of-way is subject to encumbrance permitting with the Department of Public Works and the City Council.
14. The Transportation Demand Management Plan, as submitted by the applicants, is hereby adopted and included as a condition of approval. The applicants are obligated under the standards defined in Section 8.1.16 (b) for implementation of the standards and requirements of the Plan. Failure to maintain transportation demand management as required above is a violation of this ordinance, and understanding that, pursuant to Sec. 2.7.8 of this ordinance, no zoning permit or certificate of occupancy may be granted until any such violation has been remedied.
15. Per Section 8.1.16 (c) iii and adoption of the TDM Plan, parking spaces may be made available by a renewable lease, provided the term of any lease does not exceed one (1) year.
16. Upon concurrence of the DRB, upon to a 20% maximum relief in parking opening for ingress/egress would offer an additional 4.8' width allowance or a maximum of **28' 9 <sup>19</sup>/<sub>32</sub>"** in garage opening width.
17. A State of Vermont wastewater permit is required.
18. It is the applicant's responsibility to comply with all applicable ADA requirements.
19. All new construction is required to meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.
20. Any outdoor signage will require a separate sign permit.
21. Standard Permit Conditions 1-15.

**NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.**